IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

Crl.MC.No. 1089 of 2007()

CMP.2512/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER: PETITIONER

DINESH KUMAR, S/O. DIVAKARAN,
PANAMPALLI PADEETHATHIL, MUTTAM MURI,
CHEPPADU VILLAGE.
(REGISTERED OWNER OF VEHICLE NO.KL-04/C-5049)

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: COMPLAINANT/STATE

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
EAST KALLADA POLICE STATION, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1089 of 2007

Dated this the 12th day of April, 2007

ORDER

The petitioner faces an allegation that his vehicle was used for the commission of the offence of illicit removal of sand. The vehicle was seized and a crime has been registered. The vehicle was produced before the learned Magistrate. The petitioner applied for release of the vehicle. That petition was dismissed by the learned Magistrate by the impugned order, a copy of which is produced as Annexure-A2. The learned Magistrate appears to have felt that the indiscretion committed is gross. In spite of a direction of this Court, the petitioner allegedly indulged in the commission of the offence. For that reason, the learned Magistrate came to the conclusion that the vehicle need not be released to the petitioner.

2. The learned counsel for the petitioner submits that the stand taken by the learned Magistrate is most unreasonable. The disposal of the case is likely to take a long period. Till then, the vehicle should not be exposed to sun and rain. The Supreme Court has eloquently expressed the concern on this subject in the decision in **Sunder bhai Ambalal Desai v. State of Gujarat** [A.I.R 2003 S.C 638]. In these circumstances, subject to appropriate conditions, the vehicle may be ordered to be released to the petitioner, it is prayed.

3. I am in agreement with the learned counsel for the petitioner. The alleged violation may be gross, but even that cannot

justify an insensitive exposure of the vehicle concerned to sun and rain resulting in an inevitable deterioration and loss. Subject to appropriate conditions, which will ensure, in the interests of justice, the vehicle can be directed to be released to the petitioner, I am satisfied.

4. In the result, this Crl.M.C is, allowed. The vehicle in question shall be released to the petitioner subject to the following terms and conditions.

i) The petitioner shall make available before the learned Magistrate all documents to show that he is the owner entitled to possession of the vehicle;

ii) He shall deposit an amount of Rs.25,000/- as security, which shall be retained in deposit in any nationalised bank in the name of the court such that the principal amount along with the interest shall be payable after a period of one year. The same shall be renewed from time to time and shall be dealt with finally as per order to be passed by the learned Magistrate later.

iii) The petitioner shall execute a bond, equal to the value of the vehicle to be ascertained and fixed by the learned Magistrate, with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

5. Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-